

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-406 (Sub-No. 14X)

CENTRAL KANSAS RAILWAY, L.L.C.–ABANDONMENT EXEMPTION–  
IN SEDGWICK, COUNTY, KS

Decided: May 24, 2001

By decision served on April 10, 2001, the Board granted Central Kansas Railway, L.L.C. (CKR), an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903-05 to abandon a line of railroad extending between milepost 19.5 near Garden Plain, KS, and milepost 3.5 southeast of the grade crossing at McCormick Avenue in Wichita, KS, a distance of 16 miles in Sedgwick County, KS. The grant was made subject to conditions relating to the rerouting of overhead traffic, as well as to environmental, historic preservation, and standard employee protective conditions.<sup>1</sup> Notice of the exemption was served and published in the Federal Register on January 10, 2001 (66 FR 2048). The exemption became effective on May 10, 2001.

On April 25, 2001, Southwind Community Synergy, Inc. (SCS), of Wichita, KS, late-filed<sup>2</sup> a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), for a portion of the line known as the Wichita–Garden Plain segment, extending from milepost 19.5 near Garden Plain, to milepost 9.62 near 135th Street West, a distance of 9.88 miles in Sedgwick County, to enable it to negotiate with CKR for use of the line as a trail. SCS submitted a statement of willingness to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and acknowledged that the use

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<sup>1</sup> On May 7, 2001, Mr. Seth Hostetler filed a petition to reopen the proceeding. That request will be dealt with in a subsequent decision.

<sup>2</sup> The January 10, 2001 notice provided that trail use/rail banking requests had to be filed no later than January 30, 2001. However, in Aban. and Discon. of R. Lines and Transp. Under 49 U.S.C. 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting filings after the due date when good cause is shown. Because there is no indication that SCS's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Railway Company–Abandonment Exemption–In Stark County, OH, STB Docket No. AB-227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

of the right-of-way for trail purposes is subject to future reactivation for rail service. By letter filed May 15, 2001, CKR indicated that it has not consummated the abandonment and that it is willing to negotiate with SCS for interim trail use and rail banking for that portion of the line.<sup>3</sup>

Trail use requests may be accepted as long as the Board retains jurisdiction over the involved right-of-way<sup>4</sup> and the carrier is willing to enter into negotiations. Inasmuch as CKR has not consummated the abandonment and is willing to negotiate with SCS for the right-of-way, a NITU will be issued with the trail use negotiation period running 180 days from the service date of this decision. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, CKR may fully abandon the line, provided that the conditions imposed in the decision served April 10, 2001, are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes. See 49 CFR 1152.29(d)(2).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the decision served on April 10, 2001, exempting the abandonment by CKR of the line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth above for a period of 180 days from the service date of this decision and notice (until November 26, 2001), subject to the conditions imposed in the April 10, 2001, decision.
3. If an interim rail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way.

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<sup>3</sup> The Board surmised in the April 10 decision, slip op. at 10 n.12, that the railroad would not consent to trail use negotiations. However, CKR's letter makes clear that it will, in fact, negotiate for trail use for that portion of the line of interest to SCS.

<sup>4</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); Soo Line Railroad Company—Exemption—Abandonment in Waukesha County, WI, Docket No. AB-57 (Sub-No. 23X) (ICC served May 14, 1987); and Missouri-Kansas-Texas Railroad Company—Abandonment—in Pettis and Henry Counties, MO, Docket No. AB-102 (Sub-No. 16) (ICC served Apr. 26, 1991).

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by November 26, 2001, interim trail use may be implemented. If no agreement is reached by that time, CKR may fully abandon the line.

7. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary